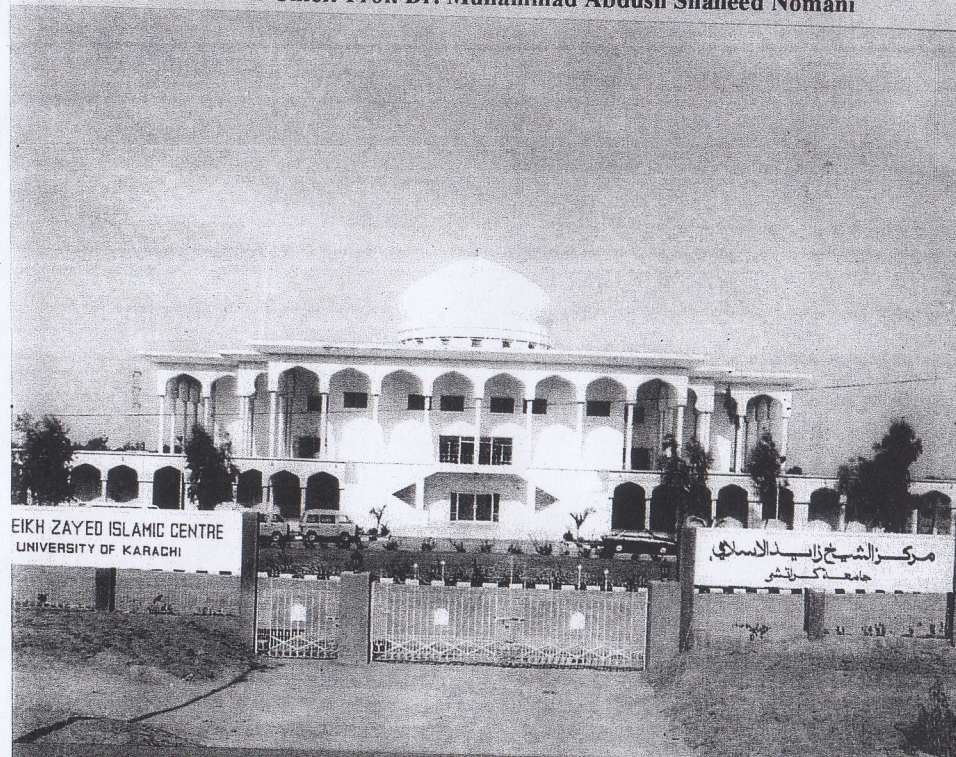


Jan-March 2000.

Vol-VIII No.1

Islamics

Editor-in-Chief: Prof. Dr. Muhammad Abdush Shaheed Nomani



**Quarterly Journal of Studies and Research
in Islam**

**Sheikh Zayed Islamic Centre
University of Karachi.**

Dr. Shams ul Basar

A critical analysis of the deliberations of Mr. David S. Powers regarding the Umariyyatan

Umariyyatan (the two famous decision of Umar ibn al-Khattab the second successor of the Prophet P.B.U.H), are regarding the entitlement of mother in the inheritance of a childless deceased, who leaves both parents along with one of the spouses, i.e., a childless wife leaving behind a husband and both parents and a childless husband leaving behind a widow and both parents. "Both these cases were referred to al-gharrawayn (the two unique) because the mother became unique and got the remaining one-third, in fact that was one-sixth and one-fourth, as Umariyyatan (the two decisions of Umar), as al-gharibatayn (the two strange cases) because those were strange in the law of inheritance and as al-gharimatayn (the two indebted) because each one of the spouses gets his/her share like a debtor and the father and mother as heirs.⁵¹ These different names attributed to these two cases indicate the importance given to this interpretation by the Ummah.

The Quran lays down the principle as: **وإن لم يكن له ولد وورثه أبواه فنصفه الثلث**. If he/she does not have a child and his/her parents are his/her heirs, then the mother is entitled to one-third.⁵² The father as a result will inherit the remaining two-third as a nearest residuary or asib.

I would like to focus my attention on a particular misinterpretation of the Umariyyatan made by Mr. David S. Powers in his book entitled "Studies in Quran and Hadith". As he says "The division of the estate between the father and mother in the proportion of two to one confirms the phrase that occurs at outset of Q.4:11, "a male is entitled to the share of two females."⁵³ He further says: the addition of a surviving husband or wife to the equation upsets the arithmetic. Suppose, for example that a man dies, leaving his wife and both parents. The wife and mother inherit one-fourth and one-third of the estate

respectively, in their capacity as ahl al-faraid, and the father, it would seem, should inherit the remaining five-twelfths of the estate as the closest surviving asib. Notice, however, that his share (five-twelfths) is not, in this case, twice as large as that of the mother (one-third). Clearly the solution just outlined violates the "principle" that a male is entitled to twice the share of a female of the same class and degree of relationship to the deceased."⁵⁴

In the situation when the surviving member is a husband, Mr. David says: "The alleged principle is also violated when a woman dies, leaving her husband and both parents. According to the Islamic law of inheritance, the husband and mother inherit one-half and one-third, respectively, in their capacity as "sharers," and the father inherits the remaining one-sixth as the closest surviving male agnate. However, the mother's share (one-third) is now twice as large as the father's (one-sixth), thereby turning on its head the principle that "a male is entitled to the share of two females."⁵⁵ The referred Quranic verse is **يوصيكم الله في أولادكم للذكر مثل حظ الأنثيين** "Allah commands you for your children that a male is entitled to the share of two females."⁵⁶ In his deliberations he has focused his attention on the half of the phrase i.e. **للذكر مثل حظ الأنثيين** "a male is entitled to the share of two females. He ignores the preceding part **يوصيكم الله في أولادكم** "Allah commands you for your children."

Elaborating his hypothesis he says: "The Fuqaha (legists) treat this last phrase, which they take referring to males and females of the same class and degree of relationship to the deceased."⁵⁷

Mr. David on one hand wants to prove that Quranic provision lays down in this respect an explicit verdict regarding the entitlement of a mother and on the other hand, quoting half of the phrase **للذكر مثل حظ الأنثيين** " and leaving the principles laid down in the first portion of the phrase **يوصيكم الله في أولادكم** to prove that, the Quranic injunctions are either insufficient or ambiguous. Some times he prefers the literary meaning of the Quran when it suits him as he says "The Quran is quite explicit about the mother's entitlement in this circumstance"⁵⁸ Then he refers to the fuqaha in support of his view, ignoring the explicit

legal document of the Quran and makes his hypothetical comment very cunningly but unwisely by quoting Iman Razi's view on the margin, he says: "the principle of inheritance (qaidat al-mirath) is that, when a male and female of the same class (jins) inherit together, the male is entitled to the share of two females." In support of this statement, he refers to the two instances in which the phrase "a male is entitled to the share of two females" occurs in the Quran (Q4:11 a and 4:176), but fails to mention two cases in which the Quran awards males and females of the same class equal shares of the estate.⁹ His hypothesis becomes baseless from the very beginning when he starts leaving the clear cut command of Allah which says: "Allah commands you for your children."

It means that either he has not rightly understood that specific phrase or deliberately ignores that clear and explicit command which needs not any other interpretation unless and otherwise specifically authorized by the Quran. As the Quran Says: "أفغير الله أبغى حكماً وهو الذي أنزل إليكم الكتاب مفصلاً Shall I seek for judge other than God when He (Allah), who has sent unto you the Book, explained in detail."¹⁰ Is there any need of other standards as God has explained His will in detail. In another verse the Quran also says "اتبعوا ما أنزل إليكم من ربكم ولا تتبعوا من دونه أولياء Follow the revelation sent unto you from your lord and follow not as friends or protectors other than Him."¹¹ Elaborating the specific mission of the Prophet (P.B.U.H.) the Quran says: "

ولو تقول علينا بعض الأقاويل لأخذنا منه باليمين ثم لقطعنا منه الوتين

And if the (the Prophet (P.B.U.H.) HAD INVENTED FALSE SAYINGS CONCERNING Us, We assuredly had taken him by the right hand and then certainly cut off the artery of his heart."¹² The Quran educates its followers not to indulge in philosophies or doctrines other than the revealed one, as the Prophet (P.H.U.H.) himself is also bound to obey the revealed orders. The Quran says: "قل ما كنت بدعاً من الرسل Says: I am not brisnger of new fangled doctrine among the apostles, nor do I know what will be done with me or with you. I follow but that which is revealed to me by inspiration."¹³ Allah does not allow any one even his Prophet (P.B.U.H.) to remove or add anything to the

Quran from his own, then what will be the capacity of others to deviate from the God's verdict. In the subsequent ayah after the ayat al-mawarith, the Quran clearly warns the whole mankind and says:

تلك حدود الله ومن يعص الله ورسوله ويتعد حدوداً يده الله ناراً

"These are the limits (imposed by) Allah And whoso disobeys Allah and His messenger and transgresses his limits, He will make him enter Fire."¹⁴ As the Quran categorically says: "فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم according to what Allah has revealed and do not follow their whims."¹⁵ The Prophet (P.B.U.H.) also said:

من قال في القرآن برأيه فليتبوأ مقعده من النار رواية من قال في القرآن بغير علم فليتبوأ مقعده من النار

Whoso explained the Quran according to his own opinion must be prepared to occupy his seat in the Fire of Hell. According to another narration whoso ever explained the Quran without knowing must be prepared to occupy his seat in the Fire of Hell."¹⁶

In the light of above clear injunctions, is there any chance for any believer to say on his personal temptation, to remove from or add anything to the Quran?

The Prophet (P.B.U.H.) did forbid his companions to write anything other than the Quran while the Quran was being revealed. The main purpose was to maintain the wording and commands of Allah clear from any doubt and misinterpretation. As the Prophet (P.B.U.H.) said: "لا تكتبوا عني ومن كتب عني غير القرآن فليمحاه Do not write, from me anything except the Quran, and he who has done so should erase that."¹⁷ The main objective was not only to obey the revealed injunctions but also to provide protection to the wording of the text. Islam does not allow his followers to adopt the desires of any one as the Quran says: "

وأن احكم بينهم بما أنزل الله ولا تتبع أهواءهم واحذرهم أن يفتنوك عن بعض ما أنزل الله طيباً

So judge between them by that which Allah has revealed, and follow not their desires, but beware of them lest they seduce you from some part of that which Allah has revealed to you."¹⁸

The following Hadith explains the same view:

من عمل عملاً ليس عليه امرنا فهو رد

He, who did something which is not based on our authority is rejected."¹⁹

Thus any act against the Quranic injunctions is not only forbidden but also rejected and unacceptable in Islam. In the light of such explicit commands, is it possible for the companions of the Prophet (P.B.U.H) to violate, reject or ignore the basic Islamic principles?

In my opinion Mr. David ignores the basic wording of the Quran *يؤثر بكم الله في أولادكم* for his vested interest and refers to Ibn Hazm of the Zahiri school, to prove the so-called "deviations from the Quran" and concludes:

"The proponents of the majority position maintain that Quranic phrase" a male is entitled to the share of two females" establishes the principle that a male is entitled to the share of two females of the same class and degree of relationship to the deceased. It is for this reason that they are troubled by the solution in which the mother inherits one-third and the father five-twelfths, or worse yet, in which the mother inherits one-third and the father one-sixth."²⁰

The misconceived concept of the entitlement of a male to the share of two females is not a general principle to be applied every where. It is only among the descendants of the deceased and those of brothers and sisters as per Q.4:11 and 4:176. Other heirs and relatives have their different capacities as specified by the Quran in different circumstances and occasions. The so-called formula of the same class and degree of relationship to the deceased is self styled.

The author of tafsir al Khazin says:

وأما التفسير فقوله تعالى يوصيكم الله أى يعهد اليكم ويفرض عليكم فى أولادكم

Allah commands you for your children means, makes you liable and assigns you (the duty) in connection with your children."²¹

As for as the father and mother are concerned, the father's and mother's share varies according to circumstances. For example, the Quran says: *ولا يورث لکل واحد منهما السدس إن كان له ولد* and his/her father and mother are entitled to one-sixth each, if he/she has a child."²² It is obviously contrary to that so-called general principle.

Another verse is regarding the uterine brothers and sisters as the Quran says:

وان كان رجل يورث كلاله أو امرأة وله أخ أو أخت فلكل واحد منهما السدس فان

كانوا أكثر من ذلك فهم شركاء فى الثلث

If a deceased leaving neither parents nor child and has a uterine brother or a uterine sister, each one of them is entitled to one-sixth, if they are more than that, then they will share one-third equally."²³

In the above both cases parents belong to the same category of relationship and in the third case uterine brothers and sisters are also of the same class. Another example can smash the whole building of Mr. David's hypothesis. In a situation when there is no child and the sole heirs are the father and mother of the deceased, the mother gets one-third and the father two-third as preceded above. When there are more than one brothers and sisters the mother's share decreases from one-third to one-sixth and as a result the father takes the remaining five-sixth. Thus the hypothesis made on the basis of this formula becomes baseless. The question arises, that, where does the formula of double share of female to a male apply? The Quran elaborates the entitlement of a male for double share of a female in two different places."²⁴

The concluding paragraph of the following verse makes this confusion clear. As the Quran says:

يستفتونك قل الله يفتيكم فى الكلالة إن امرؤا اهلك ليس له ولد وله أخت فلها النصف ما ترك وهو يرثها إن لم يكن لها ولد فإن كانتا اثنتين فلهما الثلث مما ترك وإن كانوا اخوة رجالا ونساء فللذكر مثل حظ الانثيين *بين الله لكم أن تضلوا والله بكل شئ عليم*

They ask you for a pronouncement. Say: Allah has pronounced for you concerning kalalah. If a childless man dies and he has a sister, hers is half the heritage, and he would have

inherited from her had she died childless. And if there be two sisters, then theirs are two-thirds of heritage, and if they be brethren, men and women, unto the male is the equivalent of the share of two females. Allah expounds unto you, so that you make no error. Allah is the knower of all things.²⁵

The above explanation indicates that the Lawgiver has restricted the application of the notion "a male is entitled to the share of two females" to certain relations and not to make error in the application of the same elsewhere. As for as the share of the mother is concerned, the Quran specifies four different occasions in which the mother's share varies. The mother is entitled to one-sixth when the deceased has a child, or she is entitled to one-third when the deceased is childless, or she is entitled to one-sixth when the deceased has two or more brethren. In all these four situations both of the parents inherit together and the father has always double or much more stronger position of entitlement than the mother in the heritage.

Mr. David has also referred to a report on behalf of Ibn Hazm that Muhammad (P.B.U.H) informs an inquirer that his mother should hold first place in his affections to be followed by his father.²⁶

This misinterpretation is either an abuse of the reference or mere ignorance of the basic principles.

The Quran says: **أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَعْمَا فِي رُضَا مِنَ اللَّهِ**

Your parents and your children you know not which of them is nearer unto you in usefulness. It is an injunction from Allah.²⁷ Affection and respect are different from the responsibilities and entitlements of a person.

The question arises, if affections play role in these entitlements, then why is this affection violated in the presence of the children, husband and even brothers and sisters? There are many places where the mother gets less than the other remote relations. For example, when there are parents with the children of the deceased, the parents get one-sixth each. The mother gets one-sixth in the presence of brother(s) and sister(s) and if the deceased has a husband, he gets one-half in the heritage of his wife. In these cases affection with the mother is still there and is

greater as compared to the others. Thus it is not violated in any sense. In this connection the author of Tafsir al-Maraghi says:

والمر في تسميته الوالدين في الميراث مع وجود الأولاد، الإشارة إلى وجوب احترامهما لي سواء في أن حظ الوالدين من الإرث أقل من حظ الأولاد مع عظم حقهما على الولد أنهما يكفيا في الغالب أقل الحاجة إلى المال من الأولاد

In the presence of descendants in the heritage, the underlying reason behind the equality of the parents indicates, that their respect is equally incumbent. The share of the parents in the heritage is less than that of the children, but their right of respect is greater as compared to the child, then apparently they might be in less need to the heritage as the children could be.²⁸

There are two procedures to be adopted for the solution of these two cases:

One is, as the Quran says: **وَالَّذِينَ لَا وَلَدَ وَوَرِثَهُ أَبَوَاهُ فَلِلْمُتَّحِ** If he/she does not have a child and his/her parents are his/her heirs, then the mother is entitled to one-third." It clearly denotes the basic principle for distribution of the heritage between the parents. It is not right to say that the mother is entitled to get one-third from the whole of the estate. If that is the case, where does the Quran say or what is the source of this derivation? as there is no such indication in the Quran and the sunnah of the Prophet (P.B.U.H). On the contrary this verse makes a foundation for distribution of the heritage between the parents, and that entitles them on the proportion of one-third and two-third, when the deceased is childless. Thus distribution between the parents will be according to the above formula when the deceased is childless.

The second is, to satisfy them according to the formula **لِلذَكَرِ مِثْلُ حَظِّ الْأُنثَى** (a male is entitled to the share of two females), as the descendants are being satisfied. For example when there are other sharers with the descendants of the deceased, they get according to the proportion of double share of female to a male after the satisfaction of those heirs including the husband and wife. Then the mother and the father will also get after the satisfaction of the other heirs according to that

proportion. It is another thing that other relatives are not entitled to inherit in the presence of the father of the childless deceased. The only heirs who can inherit along with the father of the childless deceased are mother, husband and wife. Thus distribution will be made between the parents after the satisfaction of any one of the spouses. I think Mr. David will have no objection to the application of his contended formula to be applied here.

Umar's behaviour towards the Quran and sunnah:

The Quran says: *و نزلنا عليك الكتاب تبيان لكل شيء* and We have sent down to you the Book explaining every thing.²⁹ The Quran itself explains the commands of Allah, gives the authority of interpretation to the Prophet (P.B.U.H) and permits the qualified mujtahidin to draw their conclusions without personal bias. The Prophet (P.B.U.H) himself depended on the revelation at first and in the absence of revelation he used to decide on the basis of *ijtihad*.³⁰

Umar's approach and understanding of the Quran was admired by the Prophet (P.B.U.H) himself.³¹ At the time of Abu Bakr Siddique, the first person who was appointed as a qadi was Umar, even though he was not named as qadi.³² His appointment was the recognition of his juristic capability and approach. When Umar became caliph, he used to decide according to the Quran and the Sunnah and if he could not find solution in those two, he used to ask the people of the precedent of his predecessors for the decision.³³ At the time of appointment of Shurayh as a qadi in Kufah, he was instructed by Umar: 'look into the Quran, if it is clear then do not ask any one, and if otherwise, follow the sunnah, of the Prophet (P.B.U.H) if it is clear, otherwise follow your own opinion.³⁴ The overall behaviour of Umar towards Kitab-Allah could easily be understood from the following narration:

أخبرني عروة ابن الزبير أن عمر بن الخطاب أراد أن يكتب السنن واستشار فيه أصحاب رسول الله فإشار عليه عامتهم بذلك فلبث شهر يستخير الله في ذلك شاكا فيه ثم أصبح يوما وقد عزم الله فقال: إني كنت ذكرت لكم من كتاب السنن ما قد علمت ثم تذكرت فإذا أناس من أهل الكتاب من قبلكم قد كتبوا مع كتاب الله كتباً فأكبر عليها وتركوا كتاب الله وإني والله لا ألبس كتاب الله بشيء فترك كتابة السنن

Urwa ibn Zubayr informed me that Umar Iban al-Khattab intended to write the Ahadith of the Prophet (P.B.U.H) and consulted the companions of the Prophet, the majority consented to write. He was suspiciously auguring Allah for one month and then one day he came with the determination and said: "As you know that I discussed with you to write the ahadith of the Prophet (P.B.U.H) then I realized that some people out of the followers of the previous books wrote commentaries of the God's book and then bent down towards them, leaving the God's book. By God I shall not garb the book of God with any thing, and as a result he abandoned his mission to write ahadith."³⁵

Expectation of any sort of violation or deviation from the explicit injunctions from such a cautious person is nothing less than malice towards Islam.

As for as the juristic opinion is concerned, it is narrated that Muadh Ibn Jabal was interviewed at the time of his appointment as judge of Yemen. The Prophet (P.B.U.H) asked him what he would do to solve the problems if he could not find the explicit text from the Quran and the sunnah. Muadh answered *اجتهد برأى ولا آلو* that he would do *ijtihad* without personal bias. The Prophet (P.B.U.H) appreciated his answer.³⁶

Muadh's Hadith indicates that in the absence of the Quranic text or Hadith, endeavour can be made to get the objectives as demanded by Islam, subject to the condition that such endeavour should not be contrary to the injunctions of the Quran and the sunnah. Thus *ijtihad* is not mere opinion, but it is an effort to discover the law from its sources. Any opinion made under the authority of *ijtihad* is not legislation but it is an extension or interpretation of the text. The Quran is the book of principles and thus allows its followers to elaborate them by the way of *ijtihad* if needed. Islamic teachings allow the learned personalities from among the believers to elaborate the Quranic injunctions as and when required within its strict framework. As the Quran says: *وليردوه إلى أولى الأمر منهم لعلمه الذين يستنبطون منهم* and Whereas if they had referred it to the messenger and such of them as are in authority, those among them who are able to think out the matter would have known it.³⁷ The Quran further says: *فاسألوا أهل الذكر إن كنتم لاتعلمون* Ask the knowing

personalities if you know not.³⁸ Thus we see at different occasions that the mujtahidin have given their expert opinion on the matters which were not clearly understood. Same is the case of Umariyyatan.

These two cases became famous among the believers, particularly Abd Allah b. Abbas objected to the decision of Zayd ibn Thabit in this connection. Among the companions of the Prophet (P.B.U.H) he is the only person who objected to it. Zayd's answer to Abd Allah b. Abbas in this respect is self explanatory:

عن عكرمة قال أرسل ابن عباس إلى زيد بن ثابت أن تجد في كتاب الله للأُم

ثلث ما بقي فقال زيد بن ثابت إنما أنت رجل تقول برأيك وأنا رجل أقول برأي

I rama said: Ibn Abbas sent me to Zayd to ask whether you find in the Book of God one-third of the remaining, Zayd b. Thabit replied you are an individual having your independent reasoning and I am an individual having my independent reasoning.³⁹

In this connection Imam Qurtubi says:

وذلك أنه اعتبرها بالمنصوص عليه وهو قوله تعالى (وورثه أُمُّهُ الثلث) ^١ نصيب الأم الثلث و كان باقي المال وهو الثلثان للأب فأُسِّس النصف الباقي من المال بعد نصيب الزوج على كل السال إذا لم يكن مع الزالدين ابن أو فوسهم فقسمه بينهما على ثلاثة للأم سهم وللأب سهمان وجو الباقي

It is why he has made his interpretation on the basis of the text and that is (and his/her parents are his/her heirs, then the mother is entitled to one-third). When he saw mother getting one-third and the remaining two-third). When he saw mother getting one-third and the remaining two-third is for the father, he established the remaining half as total after the satisfaction of the spouse. When there is no child or sharer with the parents, then he distributed between them in threes, the mother got one-third and the father the remainder two-third.⁴⁰

Imam al-Shawkani says:

أما لو كان معها أحد الزوجين ليس للأم إلا ثلث الباقي بعد الموجود من الزوجين، وروى عن ابن عباس أن للأم ثلث الأصل مع أحد الزوجين، وهو يستلزم تفضيل الأم على الأب في مسألة زوج وأبوين مع الاتفاق على أنه أفضل منها عند انفاردهما عن أحد الزوجين

If one of the spouses is with them then the mother is entitled only to one-third of the remaining in the presence of the spouses. It is narrated from ibn Abbas that the mother is entitled to one-third from the whole if one of the spouses is with her.⁴¹

Imam Shirazi says:

أن الأب والأم إذا اجتمعا كان للأب الثلثان ولأم الثلث فإذا زاحمهما ذوفرض قسم الباقي بعد الفرض بينهما على الثلث والثلثين كما لو اجتمعا مع بنت

When the parents are together, the father is entitled to two-third and the mother to one-third. If there is a sharer with them the remaining will be distributed between them with the proportion of one-third and two-third as they get with the daughter.⁴²

Following are the other aspects of the discussion as Mr. David says: "The deviation from the explicit wording of the Quran in the Umariyyatan did not pass unnoticed or unchallenged."⁴³ Then he refers to Ali and Ibn Abbas that they have also opposed the said view.

The vast majority of the prominent fuqaha are unanimous in this respect.

Ibn Kathir says:

وقد جعل الله لها نصف ما جهل للأب فتأخذ ثلث الباقي ويأخذ الأب الباقي ثلثه، هذا قول عمرو عثمان وأصح الروايتين عن علي و به يقول ابن مسعود و زيد بن ثابت و هو قول الفقهاء السبعة والأئمة الأربعة و جمهور العلماء

God has granted her (mother) half of that which is granted to the father. She gets one-third from the remaining and he gets the remainder two-third. This is attributed to Umar, Usman, and to Ali according to one of the authentic narration. Ibn Masud and Zayd ibn Thabit also have the same view. Fuqaha al-sabah (seven jurists)⁴⁴. Aimah al-arabah (four founders of the schools)⁴⁵ and majority of the scholars have the same view.⁴⁶

عن عامر الشعبي عن علي في امرأة وأبوين قال من أربعة للمرأة الربع وللأم ثلث مابقي

وما بقي للأب

Amir Al-shabi narrates that Ali said in the case of widow and both parents, the widow will get one-fourth and the mother one-third of the remaining and the father will get the remainder.⁴⁷

عن أبي مهلب أن عثمان بن عفان قال للمرأة الربع من أربعة وللأم ثلث مابقي

سهم وللأب سهمان

Abu Muhlab narrates that Uthman b. Affan said: The widow will get one-fourth share of four and the mother will get one-third of the remaining i.e., one-fourth and the father two-fourth.⁴⁸

عن سعيد بن المسيب عن زيد بن ثابت أنه قال في امرأة تركت زوجها وأبويها

للزوج النصف وللأم ثلث مابقي

Said b. al-Musayyib narrates from Zayed b. Thabit that he said in the case of husband and both parents, the husband is entitled to one-half and the mother one-third from the remaining.⁴⁹

عن عزيز الرشح قال سألت سعيد بن المسيب عن رجل مات وترك امرأة وأبوين قال

قسمها من أربعة أسهم للمرأة سهم وللأم ثلث مابقي وللأب بقية المال

Aziz al-Rashk narrates that he asked Said b. al-Musayyib regarding a person who died leaving a widow and both parents. He said "Divide into four and give one-fourth to the widow and to the mother one-third of the remaining and the remainder is for the father."⁵⁰

Zayd ibn Thabit was praised for his expertise in the law of inheritance by the Prophet (P.B.U.H) himself, saying **وأفضلكم زيد** Zayd is the best scholar of inheritance among you⁵¹. It seems that Umar might have consulted him in this particular matter, as the following narrations denote:

خطب عمر رضي الله بالحاجة مكان بالشام فقال من يسأل عن الفرائض فليأت زيد بن ثابت

Umar made a speech at al-Jabiah a place in Syria and said: Anyone who asks about inheritance, should go to Zayd ibn Thabit.⁵²

عن سليمان بن يسار، قال: ما كان عمرو عثمان يقدمان على زيد أحد في الفرائض

والفتوي والقضاء

Sulayman ibn Yasar said that Umar and Uthman shall never make advancement over Zayd in inheritance, legal opinion, Qira'a, and qada.⁵³

Mr. David says: "Although Umar's name is mentioned in connection with the case of a husband, father and mother, his name is never mentioned in connection with the other case."⁵⁴

These two narrations are attributed to Umar:

عن عبد الله قال كان عمر إذا سلك بنا طريقا اتبعناه فيه وجدناه سهلا وأنه قضى في

امرأة وأبوين من أربعة فأعطى المرأة الربع الأم ثلث مابقي وللأب سهمين

Abd Allah ibn Masud narrates that whenever Umar adopted a procedure, we followed it and found it easy. He decided the case of a widow and both parents in four, giving the widow one-fourth and the mother one-third of what remains, and to the father the remainder.⁵⁵

The other narration is regarding husband and parents:

قال عبد الله كان عمر إذا سلك بنا طريقا وجدناه سهلا فإنه قال في زوج أبوين

للزوج النصف وللأم ثلث مابقي

Abd Allah ibn Masud says that whenever Umar adopted a procedure, we followed it and found it easy. He decided the case of a husband and both parents, one-half for the husband, one-third of the remaining for the mother.⁵⁶

Abu Bakr al-Jassas says:

فقال علي و عمر و عبدالله بن مسعود و عثمان و زيد للزوجة الربع وللأم ثلث مابقي ومابقي فللأب وللزوج النصف وللأم ثلث مابقي وما بقي فللأب

Ali, Umar, Abd Allah b. Masud, Usman and Zayd have said that the widow gets one-fourth, the mother one-third of the remaining and remainder is for the father. And the husband, gets one-half, the mother one-third of the remaining and the father the remainder.⁵⁷

Al-Jassas explains the whole concept which denotes that the mother and father will get their shares from the heritage as the son and daughter or brother and sister are getting after the husband and wife are being satisfied according to the proportion (a male is entitled to the share of two females). He further says:

وظاهر القرآن يدل عليه لأنه قال (فإن لم يكن له ولد وورثه أبواه فلأمه الثلث) فتحمل الميراث بينهما أثلاثا كما جعله أثلاثا بين الابن والبنت في قوله تعالى (وللذكر مثل حظ الأنثيين) وجعله بين الأخ والأخت أثلاثا بقوله تعالى (وإن كانوا إخوة رجالا ونساء فللذكر مثل حظ الأنثيين) ثم لما سمي للزوج والزوجة ماسمي لهما رآخذ انصبيهما كان الباقي بين الابن والبنت على ما كان قبل دخولهما وكذلك بين الأخ والأخت وجب أن يكون أحد الزوج والزوجة نصيبهما موجبا للباقين بين الأبوين على ما استقاه أثلاثا قبل دخولهما-

And apparently the Quran confirms that as Allah says: (If he/she does not have a child and his/her parents are his/her heirs, then the mother is entitled to one-third). So the heritage was made in threes between them as was made between son and daughter in the verse (a male is entitled to the share of two females) and between brother and sister in threes as Allah says (and if they be brethren, men and women, unto the male is the equivalent of the share of two females). After satisfying the husband and the wife, the son and daughters get the remaining collectively as were getting before their entrance in the heritage. same is the case of brother and sister. It denotes that parents will

get the remaining in threes after satisfying the husband and the wife, as were getting before their entry in the heritage.⁵⁶

ولأننا لو أعطينا الأم ثلث المال لزم زيادتها على الأب في مسألة الزوج وأخذ الأب في مسألة الزوجة زيادة عنها نصف السلس وهذا لا نظير له فإن اليهود مساواتها للأب أو أخذ ضعف ما تأخذ الأم

In the case of husband if we give one-third of the heritage to the mother that will result in preference in share over the father and in the case of wife his share will increase from hers to one-twelfth, whereas there is no precedent to it, as either they get equally or the father gets double the share of mother.⁵⁹

The author of Rooh al-Bayan says:

أما إذا كان معهما أحد الزوجين فلأمه ثلث مابقي من فرض أحد هما لأثلاث الكل كما قاله ابن عباس رضي الله عنه فإنه يفضي إلى تفضيل الأم على الأب مع كونه أقوى منها في الإرث بدليل أضعافه عليها عند انفرادها عن أحد الزوجين و كونه صاحب فرض وعصبة وذلك بخلاف وضع الشرع

When one of the spouses are with them, the mother gets one-third of the remaining after the satisfaction of the share of the spouse and not one-third of the whole (heritage) as Iban Abbas has said. In fact when they are alone, the father has an edge over her in the heritage, as he gets double of hers in the absence of a spouse. And he is also entitled as sharer and residuary both. It (giving one-third of the whole estate in the presence of husband or wife) amounts to preference of mother over the father which is against the will of God.⁶⁰

In this connection Muhammad Abu Zuhrah says:

"لأن الآية تجعل الميراث عند ما يكون للأبوين على أساس الثلث للأم والثلثين للأب، فكانت النسبة بينهما مقدرة على هذا الأساس

The verse gives the heritage to the mother and father on the basis of one-third to the mother and two-third to the father, so the proportion between both of them is determined on the same basis.⁶¹

He further says:

”وعلى هذا الأساس نقرر إن إعطاء الأم ثلث الباقي هو الذي يتفق مع معنى النص الكريم لأنه أعطى لها الثلث وأعطى الأب الباقي عند ما لا يكون أحد الزوجين فإن كان أحد الزوجين فإن النسبة التي قدر المولى سبحانه هي التي تكون ولا تتحقق تلك النسبة إلا إذا أعطينا الأم ثلث الباقي بعد نصب أحد الزوجين والأب الباقي النهائي

On the same basis we decide that one-third to the mother from the remaining, is unanimous with the Quranic text, as it has given one-third to the mother and the remainder to the father when there is no one of the spouses. If there is one of the spouses, then the proportion determined by God will prevail. And that proportion can not be achieved until the mother is granted one-third after the satisfaction of one of the spouses and to the father the remainder.⁶²

After going thoroughly through the topic of the Umariyyatan, the author of this article opines that, Mr. David is not fully acquainted with the overall knowledge of Islam. His writings reflect that he knows the Islamic law of inheritance, but has not fully understood the principles of Islamic law.

REFERENCE AND NOTES

1. Abd al-Aziz al-Muhammad al-salman, Al-asilah wal-ajwibah al-fiqhiyyah, al-Riyad: 1981/1401., 7:232-33.

وسميا بالفراوين لإشتهارهما كالكوكب الأغر ولأن الأم غرت فقبل لها الثلث
أبائي وهو في الحقيقة سدس أوريح وسميا بالعمرتين لقضاء عمر بهما وبالفريين
لفرايتهما من مسائل الفرائض وبالفريتين لأن كلامن الزوجين كالفريين صاحب
الدين والأبوين كالأبوين وأخذان ما فضل

2. Quran: 4:11
3. Powers, David S., Studies in Quran and Hadith, Berkeley: p.57.
4. Powers, Studies in Quran and Hadith, Berkeley: p.57-58.
5. Powers, Studies in Quran and Hadith, Berkeley: p.58.

6. Quran: 4:11
7. Powers, Studies in Quran and Hadith, Berkeley: p.57.
8. Powers, Studies in Quran and Hadith, Berkeley: p.57.
9. Powers, Studies in Quran and Hadith, Berkeley: p.57.
10. Quran: 6:114.
11. Quran: 7:3.
12. Quran:69:44-46.
13. Quran:46:9.
14. Quran:4:13 -14.
15. Quran:5:48.
16. Al-Tabrayzi, Muhammad b. Abd Allah al-Khatib. Mishkat al-Masabih, Beirut: 1991/1411. 1:112.
17. Muslim b. al-Hajjaj al-Qushayri, Abu al-Hasan, Sahih, Karachi: Kitab al-Zuhd, bab al-tathabut fil hadith wa hukm kitab al-ilm. ND.
18. Quran: 5:49.
19. Bukhari, Muhammad b. Isail, Sahih, bi-sharh al-Kirmani, Beirut: 1981/1401, 25:76.
20. Powers, Studies in Quran and Hadith, Berkeley: p.65.
21. Al-Kazin, Ali b. Muhammad, Ala al-Din, Lubab al-tawil fi maani al-tanzil, Cairo: 1955/1375, 1:489.
22. Quran: 4:11.
23. Quran: 4:12.
24. Quran: 4:11 and 4:176.
25. Quran: 4:176.
26. Powers, Studies in Quran and Hadith, Berkeley: p.64.
27. Quran:4:11.
28. Al-Maraghi, Ahmad al-Mustafa, Tafsir al-Maraghi, Beirut: 1985/1405, 4:197.
29. Quran: 16:89.

30. Nasir b. Aqil, Dr., Al-Qadafiahd Umar b. al-Khattab, ND, 1:617.
31. Wali Allah Shah, Hujjat Allah al-Balighah (urdu), Karachi: ND, p.221.
32. Nasir b. Aqil, Dr., Al-Qadafiahd Umar b. al-Khattab, ND, 1:619.
33. Al Khurdri, Muhammad, Tarikh al-Tashri al-Islami, Egypt: ND., p.114.
34. Al-Khudri, Muhammad, Tarikh al-Tashri al-Islami, p.114, Wali Allah, Shah, Hujjat Allah al-balighah, (Urdu), p. 240.
35. Al Khurdri, Muhammad, Tarikh al-Tashri al-Islami, p.109.
36. Hanbal, Ahmad b., Musnud, on the margin kanz al-ummah, Beirut, ND, 5:242.
37. Quran: 4.83.
38. Quran: 21:7.
39. Al-Darami, al-Sunan: 2.346.
40. Alqurtubi, Tafsir, 5: 56-57.
41. Al-Shawkani, Fath al-Qadir al-jami bayna funn-e-al-rawayah wal-dirayah min ilm al-tafsir, 1:397, ND.
42. Al-Shirazi, Abu Ishaq Ibrahim b. Ali, al-Muhadhab, Cairo, 2:26, ND.
43. Powers, Studies in Quran and Hadith, p.62.
44. The are Said b. al-Musayyib, Urwah b. al-Zubayr, Abu Bakr b. Abd al-Rahman, Ubayd Allah b. Abd Allah, Kharijah b. Zayd, Qasim b. Muhammad and Sulayman b. Yasar.
45. They are Malik b. Ans, Abu Hanifah Numan b. Thabit, Muhammad b. Idris al-Shafi I and Ahmad b. Hanbal.
46. Ibn Kathir, Abu al-Fida, Ismail, Tafsir al-Quran al-Azim: Beirut, 1969/1388, 1:458.
47. Al-Darami al - Sunan: 2.345.

48. Al- Daramial - Sunna: 2:344-45. Bayhaqi. Abi Bakr Ahmad b. al-Husayn, al-Sunan al-Kubra. Multan: 6:228. ND.
49. Al-Darami, al-Sunan: 2:250.
50. Al-Bayhaqi, al-sunan. 6:228.
51. Al-Sarakhsi, Shams al-Din, Imam, al-Mabsut, Egypt: 29:136, ND, Al-Bayhaqi, al-Sunan, 6:210.
52. Al-Baqri, Muhammad b. Umar, Hashiyah al-Allamah Hibr al-fahamah, Egypt: 9, ND.
53. Al-Dhahabi, Muhammad b. Ahmad B. Usman, Seyar alam al-Nubala, Egypt: 1957/1376-77, 2:311.
54. Powers, Studies in Quran and Hadith, p. 58.
55. Al-Darami, al-Sunan: 2.250.
56. Al-Darami, al-Sunan. 2:249.
57. Al-Jassas, Abu Bakr, Ahmad b. Ali, Ahkam al-Quran, Cairo: 1928-29/1347, 2:101.
58. Al-Jassas, Ahkam al-Quran, 2:101.
59. Abd al-Rahman b. Nasir, Taysir al-Karim al-Rahmat fi tafsir al-Kalam al-mannan: published by M. Zuhri al-Najjar, 1989-90/1410, 2:22.
60. Haqi, Sheikh Ismail, Tasfir Rooh al-Bayan: Beirut: 1985/1405, 2:171-72.
61. Abu Zuhra, Muhammad Ahkam al-tarakat wal-mawarith, Cairo: ND, P.132.
62. Abu Zuhra, Muhammad, Ahkam al-tarakat wal-mawarith, P.132.